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July 20, 2001

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EXECUTIVE SECRETARY

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of the Direct Testimony of Cynthia K. Cox on behalf of BellSouth. Copies of the enclosed are being provided to counsel for Covad.

Very truly yours,

Guy M. Hicks

GMH:ch
Enclosure

CERTIFICATE OF SERVICE


I hereby certify that on July 20, 2001, a copy of the foregoing document was served on the parties of record, via the method indicated:

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Henry Walker, Esquire
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1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 DIRECT TESTIMONY OF CYNTHIA K. COX
3 BEFORE THE TENNESSEE REGULATORY AUTHORITY
4 DOCKET NO. 00-01130
5 JULY 20, 2001

6
7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
8 TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR
9 BUSINESS ADDRESS.

10
11 A. My name is Cynthia K. Cox. I am employed by BellSouth as Senior Director
12 for State Regulatory for the nine-state BellSouth region. My business address
13 is 675 West Peachtree Street, Atlanta, Georgia 30375.

14
15 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR EDUCATIONAL
16 BACKGROUND AND EXPERIENCE IN THE TELECOMMUNICATIONS
17 INDUSTRY.

18
19 A. I graduated from the University of Cincinnati in 1981 with a Bachelor of
20 Business Administration degree in Finance. I graduated from the Georgia
21 Institute of Technology in 1984 with a Master of Science degree in
22 Quantitative Economics. I immediately joined Southern Bell in the Rates and
23 Tariffs organization with the responsibility for demand analysis. In 1985 my
24 responsibilities expanded to include administration of selected rates and tariffs
25 including preparation of tariff filings. In 1989, I accepted an assignment in the
26 North Carolina regulatory office where I was BellSouth's primary liaison with

1 the North Carolina Utilities Commission Staff and the Public Staff. In 1993, I
2 accepted an assignment in the Governmental Affairs department in Washington
3 D.C. While in this office, I worked with national organizations of state and
4 local legislators, NARUC, the FCC and selected House delegations from the
5 BellSouth region. In February 2000, I was appointed Senior Director of State
6 Regulatory.

7
8 Q. WHAT IS THE STATUS OF THE NEGOTIATIONS BETWEEN COVAD
9 AND BELL SOUTH?

10
11 A. BellSouth has negotiated in good faith with DIECA Communications, Inc.,
12 d/b/a Covad Communications Company ("Covad") both before and after
13 Covad filed its Petition for Arbitration with the Tennessee Regulatory
14 Authority (the "TRA" or "Authority") on December 21, 2000. Covad's
15 Petition listed thirty-six unresolved issues, with several issues containing more
16 than one part. Since the filing of the petition, the parties have resolved
17 seventeen full issues and a portion of another, leaving eighteen full issues and
18 half of another for this Authority to arbitrate.

19
20 Q. WHAT IS THE PURPOSE OF THE TESTIMONY THAT YOU ARE FILING
21 TODAY?

22
23 A. The purpose of my testimony is to present BellSouth's position on many of the
24 unresolved issues in the negotiations between BellSouth and "Covad".
25 BellSouth witnesses Jerry Kephart, Jerry Latham, Tommy Williams and Jerry

1 Wilson are also filing testimony in this proceeding. Specifically, my testimony
2 addresses Issues 1, 6, 8, 11, 12, 19, 25, and 33(a). Mr. Kephart addresses
3 Issues 7(a) and (b), 26 and 31. Mr. Latham addresses Issues 5(a) – (c); Mr.
4 Williams addresses Issues 16, 18, and 21 – 23; and Mr. Wilson discusses
5 issues 13 and 21. BellSouth and Covad have continued negotiations and it is
6 BellSouth's understanding that Issues 2, 3, 4, 9, 10(a) and (b), 14, 15, 17, 20,
7 24, 27, 28, 29, 30, 32 and 33(b)-36 are no longer considered in this docket.
8 These issues, therefore, will not be discussed in the testimony being filed
9 today.

10
11 ***Issue 1: What limitations of liability, if any, should be included in the Parties'***
12 ***Interconnection Agreement?***

13
14 Q. WHAT IS BELL SOUTH'S POSITION WITH REGARD TO INCLUDING
15 LIMITATION OF LIABILITY IN THE INTERCONNECTION
16 AGREEMENT BETWEEN BELL SOUTH AND COVAD?

17
18 A. BellSouth believes that Covad's proposal represents a drastic departure from
19 general industry practice with regard to limitation of liability. Further, it is
20 BellSouth's position that this issue is not an appropriate subject for arbitration.
21 BellSouth does not dispute that parties may include in the negotiation process,
22 any issue that they choose to discuss. Although I am not a lawyer, it is my
23 understanding that Section 252(a) of the Telecommunications Act of 1996
24 ("the Act") allows parties to negotiate and enter into a binding agreement for
25 interconnection, without regard to the standards set forth in §251(b) and (c) of

1 the Act. That is, the parties can agree to terms that create obligations that are
2 not statutorily required.

3

4 When such negotiations fail, and arbitration is sought, however, Section 252(e)
5 of the Act constrains the Authority to resolve any “open issues” in a manner
6 that meets “the requirements of section 251, including the regulations
7 prescribed by the [FCC] pursuant to section 251 . . .” None of the
8 requirements of Section 251 addresses limitations of liability.

9

10 Q. WHAT IS BELL SOUTH’S POSITION WITH REGARD TO LIMITATIONS
11 OF LIABILITY?

12

13 A. Without waiving the position stated above, BellSouth has proposed that each
14 parties’ liability to the other arising out of any negligent act or omission should
15 be limited to a credit for the actual cost of the services or functions not
16 performed or improperly performed. BellSouth is willing to exclude from this
17 limitation losses resulting from gross negligence or intentional misconduct, and
18 indeed such language is found in Section 8.3.4 of the General Terms and
19 Conditions of the Interconnection Agreement. BellSouth, however, is not
20 willing to simply do away with any limitation of liability and, it is my
21 understanding, that it is not statutorily obligated to do so.

22

23 Q. SHOULD BOTH BELL SOUTH AND COVAD BE LIABLE FOR
24 UNLIMITED DAMAGES, WITHOUT A LIABILITY CAP, TO ONE

1 ANOTHER FOR FAILURE TO PERFORM ANY MATERIAL PROVISION
2 OF THE AGREEMENT?

3

4 A. No. The parties' liability should be limited as described above. It is common
5 for parties to an interconnection agreement to agree to limited liability.
6 Additionally, limitations of liability are standard in the telecommunications
7 industry. The tariffs of BellSouth and other telecommunications service
8 providers, for instance, commonly limit the service provider's liability.

9

10 Q. YOU STATED ABOVE THAT "LIMITATIONS OF LIABILITY ARE
11 STANDARD IN THE TELECOMMUNICATIONS INDUSTRY." PLEASE
12 GIVE SOME SPECIFIC EXAMPLES.

13

14 A. Both BellSouth's Tennessee Access Services Tariff and General Subscriber
15 Service Tariff ("GSST") include limitation of liability. With regard to access
16 customers, Section E2.1.3 of the Access Services Tariff states in part:

17 *the Company's liability, except as set forth in E8.1.3 following, if any,*
18 *shall not exceed an amount equal to the proportionate charge for the*
19 *service for the period during which the service was affected.*

20 Section E8.1.3 addresses Recording of Service.

21

22 Also, with regard to business and residential customers, Section A2.5.1 of the
23 GSST, in part, sets forth the following:

24 *The Company's liability, if any, for its willful misconduct, is not limited*
25 *by this Tariff. With respect to any other claim or suit, by a customer or*

1 by any others, for damages associated with the installation, provision,
2 preemption, termination, maintenance, repair, or restoration of service,
3 the Company's liability if any shall not exceed an amount equal to the
4 proportionate part of the monthly recurring charge for the service for
5 the period during which the service was affected.
6

7 Q. WHAT IS BELLSOUTH ASKING OF THIS AUTHORITY?
8

9 A. We ask this Authority to reach the conclusion that none of the requirements of
10 Section 251 addresses limitation of liability, and therefore, this issue should
11 not be decided in this arbitration proceeding. If, however, this Authority
12 decides that the issue is appropriate to be decided in this arbitration proceeding,
13 BellSouth respectfully requests that BellSouth's position should be adopted
14 and the parties ordered to include language limiting their respective liability.
15 There is no reason for the Authority to allow Covad to seek more damages as a
16 result of a mistake made by BellSouth than BellSouth's retail and wholesale
17 access customers would be allowed to seek as a result of the same mistake by
18 BellSouth. Covad's proposal, therefore, should be denied because it is
19 inconsistent with general industry practices and it would result in preferential
20 treatment of Covad.
21

22 ***Issue 6: Where a due date for the provisioning of a facility is changed by BellSouth***
23 ***after a Firm Order Confirmation has been returned on an order, should***
24 ***BellSouth reimburse Covad for any costs incurred as a direct result of the***
25 ***rescheduling?***

1

2 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

3

4 A. BellSouth's position is that it should not be required to reimburse Covad when
5 a provisioning due date is changed after BellSouth returns a Firm Order
6 Confirmation ("FOC") to Covad.

7

8 Q. WHAT IS THE BASIS OF BELL SOUTH'S POSITION?

9

10 A. Covad is asking that if BellSouth cannot meet the date that is indicated on the
11 FOC, that Covad be allowed to impose the same charges on BellSouth that
12 Covad alleges BellSouth imposes on Covad to modify the order in any way.
13 Although Covad's request may have superficial appeal, the circumstances
14 being compared are not analogous.

15

16 First, when Covad places an order with BellSouth, Covad presumably either
17 has a customer that it wants to provide service to, or Covad has made a choice
18 to order service accepting the risk that a customer will not be available when
19 BellSouth delivers the service. In these situations, when Covad changes the
20 order that it has placed, it is appropriate that Covad compensate BellSouth for
21 the costs that BellSouth has incurred on behalf of Covad.

22

23 On the other hand, what Covad is asking is that BellSouth financially guarantee
24 that an order will be provisioned on the original due date indicated on the FOC.
25 In order to make such a guarantee, BellSouth would have to take additional

1 steps in the ordering phase that do not currently occur. Indeed, what Covad
2 requests appropriately occurs in the provisioning phase of the process, rather
3 than in the ordering phase. To do what Covad requests would result in
4 additional costs being incurred in the ordering phase, prior to the FOC being
5 returned to Covad. Such additional costs are not reflected in the current cost
6 studies and proposed rates that have been presented to the TRA in the various
7 cost proceedings it has conducted. In short, if Covad wants financial
8 guarantees that the requested due date will not be missed due to facilities
9 problems, work force issues or even “Acts of God,” then the rates Covad pays
10 for the services it wants would have to be adjusted to reflect BellSouth’s
11 assumption of those risks.

12
13 Q. WHAT IS A FIRM ORDER CONFIRMATION OR “FOC”?

14
15 A. A FOC is used by BellSouth to notify Covad that the order placed by Covad is
16 correct in its form. The FOC provides the customer with the information
17 required for control and tracking of the request(s) for the provisioning of local
18 service.

19
20 It is important to understand that the FOC is a confirmation, not a
21 “commitment,” because BellSouth has not, at this point in the process, for
22 instance, dispatched a technician to ensure that the facilities necessary to
23 complete the order are in place and working. The *BellSouth Business Rules for*
24 *Local Ordering – OSS99 General Local Service Ordering Information* (the
25 “Rules”), available to Covad and all other CLECs at:

1 <http://www.interconnection.BellSouth.com/guides/html/leo.html>
2 makes abundantly clear that the FOC is not a guarantee. In part, Section 2.8.3
3 of the Rules states:

4 *The FOC does not constitute and should not be considered a guarantee*
5 *that facilities are available. The committed due date is based on an*
6 *assumption that facilities are available. If there is a post-FOC facility*
7 *problem detected, the CLEC will be informed of the estimated service*
8 *date by a supplemental FOC. (Emphasis added.)*

9 If it is determined that facilities are not available at the time service is being
10 installed, the CLEC will be notified from the BellSouth installation control
11 center. BellSouth uses the same process for its retail orders.

12
13 Q. DOES THE FOC CONTAIN A DUE DATE?

14
15 A. Yes. A FOC is returned to the CLEC, either via facsimile or electronically,
16 after the LCSC processes the CLEC's service request(s) and determines that
17 corrections or error resolutions are not required. In addition to the date, the
18 FOC will provide the BellSouth order number, the service due date and
19 telephone numbers. Additional service specific data may also be provided. As
20 noted above, however, the date provided is based on the assumption that
21 facilities are available.

22
23 In correspondence between BellSouth and Covad, the following explanation
24 was given with regard to Covad's allegation that BellSouth routinely changes
25 FOC dates on pending UNE loop orders:

1 *In your letter you state that BellSouth routinely changes Firm Order*
2 *Confirmation (FOC) dates on Covad's pending UNE loop orders.*
3 *Without any specific orders to reference, I assume you are referring to*
4 *instances where an order is placed in a Pending Facility (PF) status.*
5 *Construction or engineering jobs, however, may require that the FOC*
6 *date be extended. There are several reasons why an order may be*
7 *placed in PF status including repair of defective cable or a need to*
8 *provide additional cable pairs or replace equipment. All CLECs are*
9 *notified of a PF status via the PF Status Report posted on the internet*
10 *as well as PF notices that are sent to the CLEC by the Local Carrier*
11 *Service Center (LCSC). BellSouth retail orders are also delayed when*
12 *facilities are not available or existing facilities are defective.*

13
14 Q. PLEASE COMMENT ON COVAD'S ALLEGATION IN ITS PETITION
15 THAT "BELLSOUTH HAS REPEATEDLY AND UNILATERALLY
16 CANCELLED COVAD UNBUNDLED LOOP ORDERS—OFTENTIMES
17 ON THE DATE BELLSOUTH ORIGINALLY PROMISED TO PROVIDE
18 THE LOOP (THE FOC DATE)." (PETITION AT ¶19.)

19
20 A. Covad's allegation is overly broad and unsubstantiated. The Petition does not
21 give any details to address such an allegation. If Covad has specific instances
22 of cancellations and can provide the details to BellSouth, BellSouth will
23 research and respond.

1 Q. ARE THERE OCCASIONS THAT COVAD'S ORDERS ARE
2 UNILATERALLY CANCELLED BY BELL SOUTH?

3
4 A. No. As a general practice, BellSouth does not unilaterally cancel a CLEC's
5 orders. BellSouth, however, does have procedures in place in the Rules where
6 an order could be cancelled. An order could be cancelled as a result of a
7 Missed Appointment ("MA"). Under these circumstances, the BellSouth
8 technician will notify Covad when an appointment is missed for end-user
9 reasons. Covad is then obligated to issue a supplement with a new desired due
10 date. The original service order will be cancelled if a new desired due date is
11 not provided within five (5) business days. Since Covad has a responsibility in
12 the procedure, and is aware of such responsibility, if Covad does not exercise
13 its responsibility and an order is cancelled, I do not consider this to be a
14 unilateral cancellation.

15
16 Q. DOES THE TRA HAVE A MECHANISM IN PLACE FOR COVAD'S USE
17 IF COVAD BELIEVES IT IS NOT BEING TREATED FAIRLY?

18
19 A. Yes. If Covad believes that BellSouth is not providing service at parity with
20 the service BellSouth provides to its retail customers, the Authority has a
21 complaint process in place. In addition, the Authority has a generic
22 Performance Measurements Docket (Docket No. 01-00193) open to develop
23 permanent performance metrics for the ongoing evaluation of operation
24 support system functions provided by incumbent local exchange carriers.
25 Direct testimony was filed in that docket on July 16, 2001.

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Although BellSouth strives to meet all due dates, there will sometimes be extenuating circumstances that prevent work from occurring as scheduled. Generally, it is BellSouth's experience that, when a conversion does not occur as scheduled, it is just as likely that the CLEC or the customer caused the miss, as it is that BellSouth caused the miss. Regrettably, an issue such as this is destined to deteriorate to finger-pointing. Because there are many reasons why due dates may be missed, BellSouth objects to Covad's proposal that BellSouth should automatically pay Covad if BellSouth must change or modify a requested date.

Q. WHAT DOES BELLSOUTH REQUEST OF THE AUTHORITY WITH REGARD TO ISSUE 6?

A. BellSouth requests that the Authority find that, for the reasons discussed above, BellSouth should not be obligated to reimburse Covad if BellSouth must change the due dates on a Covad loop order.

Issue 8: When Covad reports a trouble on a loop where, after BellSouth dispatches a technician to fix the trouble, no trouble is found, should Covad pay for BellSouth's cost of the dispatch and testing?

Q. WHAT IS BELLSOUTH'S UNDERSTANDING OF THIS ISSUE?

1 A. BellSouth understands that Covad is asking that BellSouth not charge Covad
2 for the dispatch and testing necessary to determine that there is no trouble on a
3 loop.
4

5 Q. WHAT IS BELLSOUTH'S POSITION WITH REGARD TO COVAD'S
6 REQUEST?
7

8 A. BellSouth's position is when Covad causes BellSouth to dispatch a technician
9 to test a loop that Covad has reported as having a problem, and no problem is
10 found on BellSouth's facilities, it is appropriate that Covad pay BellSouth's
11 expenses incurred as a result of the unnecessary dispatch.
12

13 Q. DO THE RECURRING RATES PAID BY COVAD COVER THE COSTS OF
14 DISPATCHING A TECHNICIAN TO FIX A TROUBLE ON A LOOP,
15 WHEN THE TECHNICIAN FINDS NO TROUBLE?
16

17 A. No. Covad's petition makes claims of paying "extraordinarily high recurring
18 charges that are sufficient for all routine maintenance on the loops it orders."
19 Cost-based recurring charges have been approved by the Authority in Docket
20 No. 97-01262, and others will be established by this Authority in Docket No.
21 00-00544. The results of those proceedings will be incorporated into the
22 parties' Interconnection Agreement.
23

24 Under the agreement being arbitrated, Covad will ultimately order various
25 types of loops to serve its customers. Over time, it would be natural that some

1 of those customers will report trouble with their service. Such trouble could be
2 in BellSouth's network, in equipment furnished by Covad, or on the Covad
3 customer's premises. BellSouth is responsible for maintaining its network
4 and/or equipment that is provided to Covad. Troubles that should be identified
5 by BellSouth are those in BellSouth's network and/or equipment that would
6 affect the loop specifications that are included in Covad's contract and
7 BellSouth's technical reference documents.

8
9 Covad claims that repair and maintenance is covered in the recurring rates it
10 pays. What Covad ignores in this claim is that the recurring rates cover
11 situations where repair and maintenance are required, or as referred to by
12 Covad as routine maintenance. BellSouth's recurring rates do not include costs
13 for dispatches when no trouble is found. These costs have not been provided
14 for in BellSouth's cost studies.

15
16 Q. WHAT DOES BELLSOUTH NOW UNDERSTAND AS THE
17 DISAGREEMENT BETWEEN THE PARTIES ON THIS ISSUE?

18
19 A. BellSouth has agreed that under very specific and narrow circumstances, i.e.,
20 BellSouth reports "no trouble found" and trouble is later found on the loop that
21 should have been found on the original dispatch, BellSouth will credit Covad
22 for the previously billed dispatch charge. BellSouth and Covad, however,
23 cannot reach agreement on the procedure for crediting Covad's bill.

24

1 Q. WHAT IS THE PROCESS FOR COVAD TO RECEIVE A CREDIT IF IT IS
2 CHARGED FOR A "NO TROUBLE" SITUATION AND A TROUBLE IS
3 ULTIMATELY FOUND?
4

5 A. Just as in all instances that Covad believes it has been wrongly billed, the
6 parties' Interconnection Agreement includes a Billing Dispute Process that can
7 be used in this instance. This is the only mechanism BellSouth has to credit
8 Covad's bill.
9

10 Q. WHAT IS BELL SOUTH REQUESTING OF THE AUTHORITY WITH
11 REGARD TO ISSUE 8?
12

13 A. BellSouth requests that the Authority find it appropriate for BellSouth to
14 charge Covad for the dispatch and testing necessary to determine that there is
15 no trouble on a loop reported by Covad as having trouble, therefore, denying
16 Covad's proposal on this issue.
17

18 ***Issue 11: What rate, if any, should Covad pay when it places a manual local service***
19 ***request, if there is no electronic ordering interface available?***

20 ***Issue 19: Where electronic access to operational support systems for line sharing is***
21 ***not available, should BellSouth be allowed to charge a manual service***
22 ***ordering charge?***
23

24 Q. WHAT IS COVAD ACTUALLY ASKING IN THESE ISSUES?
25

1 A. Covad wants to pay an electronic ordering charge for ordering services that
2 cannot be ordered electronically.

3

4 Q. WHAT IS BELLSOUTH'S POSITION ON THESE ISSUES?

5

6 A. Manual ordering charges should apply when Covad places an order manually,
7 either for its own business reasons or because BellSouth does not have an
8 electronic interface that will allow Covad to place orders electronically for
9 certain complex services or elements. The manual service order charges,
10 established by the Authority in Docket No. 97-01262, and those that will be
11 established in Docket No. 00-00544 are the appropriate rates to charge Covad
12 under the circumstances cited by Covad.

13

14 In general, if an electronic ordering interface were not available, BellSouth
15 would incur costs to manually process orders for Covad and for other CLECs
16 in Tennessee. These costs have to be recovered, and should be recovered from
17 the cost-causer, the entity placing the manual service order.

18

19 Q. IS BELLSOUTH REQUIRED TO PROVIDE ELECTRONIC ORDER
20 PROCESSING FOR ALL UNES?

21

22 A. No. In paragraph 87 of its Order on BellSouth's second 271 application for
23 Louisiana ("LAII Order"), the FCC stated:

24 . . . a BOC must offer access to competing carriers that is analogous
25 to OSS functions that a BOC provides to itself. Access to OSS

1 *functions must be offered in 'substantially the same time and manner'*
2 *as the BOC. For those OSS functions that have no retail analogue . . .*
3 *a BOC must offer access sufficient to allow an efficient competitor a*
4 *meaningful opportunity to compete.*

5 BellSouth, therefore, is not required to provide electronic ordering for all
6 unbundled network elements ("UNEs"), but Covad proposes to be charged a
7 price for electronic ordering regardless of whether BellSouth provides that
8 capability.

9
10 Q. ARE THERE ANY EXCEPTIONS TO WHEN BELLSOUTH WILL
11 CHARGE COVAD A MANUAL ORDERING CHARGE FOR PLACING

12
13 A. Yes. BellSouth's electronic ordering systems, like any other electronic
14 systems, are going to be down from time to time. When problems with the
15 electronic ordering systems prevent Covad from placing electronic orders that
16 BellSouth normally accepts, Covad may order the services it desires manually
17 without being charged the manual order charge. This is a fair and reasonable
18 approach to addressing occasional system problems. In addition, in
19 compliance with ¶87 of the LAII Order referenced above, if BellSouth offers
20 electronic ordering capabilities for a retail service and the CLEC must place a
21 manual order for the same, or an analogue, service, BellSouth will not charge
22 the manual ordering charge.

23
24 Q. DOES BELLSOUTH PROVIDE ELECTRONIC ORDERING CAPABILITY?

1 A. Yes. The majority of UNEs can be ordered electronically. BellSouth provides
2 electronic interfaces for pre-ordering and ordering associated with most xDSL
3 type loops, as well as, line sharing. While BellSouth and Covad have agreed
4 on rates for electronic ordering that would apply throughout BellSouth's
5 region, the companies have not agreed on the instances where such rate would
6 apply.

7
8 Q. WHAT DOES BELLSOUTH REQUEST OF THIS AUTHORITY WITH
9 REGARD TO ISSUES 11 AND 19?

10

11 A. BellSouth asks that the Authority find that if the ordering process for the
12 service that Covad wants is a manual process, then Covad must pay BellSouth
13 for such manual service order processing, at the rates established by the
14 Authority.

15

16 ***Issue 12: Should Covad have to pay for a submitted LSR when it cancels an order***
17 ***because BellSouth has not delivered the loop in less than five business days?***

18

19 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

20

21 A. BellSouth's position is that once Covad submits an LSR, BellSouth begins
22 processing Covad's order and, even if Covad withdraws its request, Covad is
23 responsible for paying whatever charges are appropriate to reimburse
24 BellSouth for the work done on Covad's behalf.

25

1 Q. WHAT IS COVAD ASKING?

2

3 A. This issue is essentially a performance measures issue, addressing BellSouth's
4 loop provisioning intervals. Covad's position first assumes that BellSouth
5 should provision a loop ordered by Covad within 5 days. Covad then assumes
6 that if BellSouth cannot provision the requested network elements in the short
7 period of time that Covad has requested, Covad should be allowed to withdraw
8 its request for service, and BellSouth should either not charge Covad for the
9 work done or, if Covad has already paid, should refund the payment or, in
10 essence, pay a penalty.

11

12 BellSouth should not be required to waive appropriate LSR charges. Although
13 BellSouth may not provision a loop in the timeframe requested, or deemed
14 appropriate by Covad, various work functions will be performed prior to
15 Covad canceling an order. It is appropriate for BellSouth to recover such costs.

16

17 Q. WHAT IS BELL SOUTH REQUESTING OF THIS AUTHORITY WITH
18 REGARD TO ISSUE 12?

19

20 A. BellSouth requests that the Authority deny Covad's proposal and find, under
21 the circumstances put forward by Covad, that Covad is responsible for paying
22 appropriate charges.

23

24 ***Issue 25: In the event Covad desires to terminate its occupation of a collocation***
25 ***space, and if there is a waiting list for space in that central office, should***

1 *BellSouth notify the next CLEC on the waiting list to give that CLEC the*
2 *opportunity to take that space as configured by Covad (such as racks,*
3 *conduits, etc.), thereby relieving Covad of its obligation to completely vacate*
4 *the space?*

5
6 Q. WHAT IS BELL SOUTH'S POSITION WITH REGARD TO THIS ASPECT
7 OF COLLOCATION?

8
9 A. BellSouth does not believe that it is allowed to reveal the identity of CLECs
10 who are seeking space in specific central offices, since many CLECs consider
11 that information to be proprietary business information. Consequently,
12 BellSouth cannot provide Covad with the name of the next CLEC on the
13 waiting list for a specific central office.

14
15 Q. WHAT ARE BELL SOUTH'S OBLIGATIONS WITH REGARD TO
16 NOTIFICATION OF CLECs IN TENNESSEE WHEN SPACE BECOMES
17 AVAILABLE FOR COLLOCATION WHEN THERE IS A WAITING LIST?

18
19 A. In Tennessee, on a first-come, first-served basis governed by the date of receipt
20 of an Application or Letter of Intent, BellSouth will maintain a waiting list of
21 requesting carriers who have either received a Denial of Application or, where
22 it is publicly known that the premises is out of space, have submitted a Letter
23 of Intent to collocate. BellSouth will notify the telecommunications carriers on
24 the waiting list that can be accommodated by the amount of space that becomes

1 available according to the position of the telecommunications carriers on said
2 waiting list.

3

4 Q. WHAT IS COVAD ASKING WITH REGARD TO THIS ISSUE?

5

6 A. First, in this issue, Covad assumes that there is limited space, and therefore a
7 waiting list of CLECs that want collocation space in the central office being
8 vacated by Covad. This would be true for some central offices, but not for
9 others. Covad then, rather than removing the equipment that it no longer
10 needs, wants the opportunity to sell its equipment to the CLEC that will be
11 moving into the space that Covad is vacating.

12

13 Q. OTHER THAN THE PROPRIETARY INFORMATION ASPECT, DOES
14 BELLSOUTH HAVE A PROBLEM WITH WHAT COVAD IS
15 REQUESTING?

16

17 A. Generally, BellSouth does not have a problem with Covad selling its
18 equipment to another CLEC. What Covad does with its equipment when
19 releasing collocation space is of no concern to BellSouth. If the TRA directs
20 BellSouth to provide Covad with the information that it is requesting,
21 BellSouth will certainly do so.

22

23 BellSouth, however, does have two concerns of a general nature with respect to
24 Covad's request. First, BellSouth is required to provision space for collocation
25 within specific timeframes. If BellSouth is required to provide the information

1 that Covad is requesting, any time lost as a result of negotiations between the
2 CLECs should not be counted as part of BellSouth's time to provide the
3 collocation space. Second, BellSouth cannot be put in the position of
4 becoming an equipment broker for Covad, or any other CLEC. This is exactly
5 what would happen if BellSouth were placed in the middle of the type of
6 transaction that Covad is suggesting. Covad, instead, must negotiate with the
7 other CLEC regarding the potential sale of its equipment.

8
9 Q. WHAT DOES BELL SOUTH REQUEST OF THIS AUTHORITY?

10
11 A. BellSouth requests that the Authority find the information that Covad is
12 requesting is proprietary in nature and that BellSouth is not required to provide
13 such information to Covad. If, however, the Authority orders BellSouth to
14 provide such information to Covad, BellSouth requests that the Authority find
15 that any time spent in the negotiating process between the CLECs not be
16 counted as part of BellSouth's provisioning time. Further, BellSouth would
17 ask the Authority to find that BellSouth is not required to handle such a
18 transaction for Covad.

19
20 ***Issue 33(a): Should Covad be required to pay amounts in dispute as well as late***
21 ***charge as late charges on such amounts?***

22
23 Q. WHAT IS BELL SOUTH'S POSITION WITH REGARD TO THIS ISSUE?

1 A. BellSouth agrees that Covad should not have to pay portions of bills that it
2 legitimately disputes until the dispute is resolved. It should, however, pay any
3 undisputed amounts. Moreover, once the dispute is resolved, Covad should
4 clearly pay late charges on the portion of the disputed bill that it is finally
5 determined that Covad owes. Otherwise Covad is simply given the free use of
6 money that should have been paid to BellSouth. Failing to require Covad to
7 pay late charges on disputed amounts that were actually owed to BellSouth
8 simply encourages Covad and any other CLEC that might opt-in to Covad's
9 agreement to contest its bills in order to delay payments to BellSouth.

10

11 Q. WHAT IS BELL SOUTH REQUESTING OF THIS AUTHORITY?

12

13 A. BellSouth requests that the Authority deny Covad's request on this issue and
14 find that once a billing dispute is resolved, Covad should pay late charges on
15 the portion of the disputed bill that it is finally determined that Covad owes.

16

17 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

18

19 A. Yes.

20

AFFIDAVIT

STATE OF: Georgia
COUNTY OF: Fulton

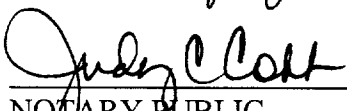
BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Cynthia K. Cox – Senior Director – State Regulatory, BellSouth Telecommunications Inc., who, being by me first duly sworn deposed and said that:

She is appearing as a witness before the Tennessee Regulatory Authority in Docket No. 00-01130 on behalf of BellSouth Telecommunications, Inc., and if present before the Authority and duly sworn, his testimony would be set forth in the annexed testimony consisting of 23 pages and 0 exhibit(s).



Cynthia K. Cox

Sworn to and subscribed
before me on July 20, 2001



NOTARY PUBLIC

Notary Public, Gwinnett County, Georgia
My Commission Expires June 27, 2005